IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FAMILY COURT APPEAL NO. 15 OF 2006

VISHWAS NARHARI SAHASTRABUDHE)
Residing at Triveni Apartment)
Anandnagar, Near Jagtap Hospital
PUNE - 411 051) .. PETITIONER

VERSUS

VARDA VISHWAS SAHASTRABUDHE)
Residing at Flat No. 7, Elite)
Homes, S.No.28/4-A, Hingne Khurd
PUNE 411 051) .. RESPONDENTS

Shri Sandesh D. Patil for petitioner

Shri A.V. Anturkar i/b for respondent

CORAM:-SMT. RANJANA DESAI &

ANOOP V. MOHTA, JJ.

DATED ON WHICH THE
JUDGMENT RESERVED:-24/8/2006
DATE ON WHICH THE
JUDGMENT DELIVERED:31/8/2006

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. The appellant-husband is the original respondent in P.A. No. 88/2001, filed by the respondent-wife in the Family Court No. 4 at Pune, praying inter alia for a decree of dissolution of marriage under

Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The appellant is aggrieved by the judgment and order dated 9/12/2005 passed in the said petition dissolving the marriage between the appellant and the respondent.

2. It is necessary to give the gist of the case which gave rise to the divorce petition, as evident from the pleadings of the parties.

3. The appellant and the respondent were married as per the Hindu Vedic Rites at Pune on 3/12/1986. At the time of marriage, the appellant was working as a Supervisor in Kirloskar Oil Engine, Pune and the respondent was working as a Clerk in the Bank of India. Admittedly the appellant is now a Senior Manager and the respondent is now working as an officer. The couple has two children, a son by name Saurabh and a daughter by name Anuja, who were at the relevant time 12 years and 11 years of age respectively.

4. In the petition it is the case of the respondent that she has been grossly illtreated by the appellant physically, mentally, sexually as well as financially. According to the respondent

the only reason she continued to cohabit with the appellant was that she sincerely desired to protect the matrimonial home. However, the behaviour of the appellant has worsened over the years and, therefore, she is constrained to file the petition.

5. She has set out several instances of physical cruelty. The first major incident had taken place in front of the children. The appellant was doing the course of Siddha Samadhi Yog which required him to eat raw vegetables. One day the respondent had kept vegetables in the refrigerator. The appellant did not like it. He hit the respondent with a rolling pin (Latane) with such a force that it broke into several pieces.

6. It is also stated by the respondent that the appellant used to get angry whenever the respondent used to spend money on the children’s clothes. The appellant used to beat the children on that count. The appellant used to severely beat the children even for minor reasons.

7. The second major incident to which the respondent has made a reference took place on 9/11/2000. On that day the respondent’s colleague

phoned her late in the evening. The appellant suspected that the respondent was having some extra marital relationship with that colleague. He beat the respondent and drove her out. The children also started weeping. They came out of the house and hugged the respondent. They requested the appellant not to hit the respondent and allow them to come in. But the appellant did not listen to them. The respondent requested the appellant to give her the key of her vehicle to go to her mother's house. The appellant did not listen to her. He screamed at her and banged the door. According to the respondent such incidents have created a fear in the minds of the children.

8. As regards mental cruelty the respondent has stated that her parents have always looked after the children. They even spend money on them. The appellant never used to contribute any money towards the expenses of the children and whenever she ran short of money the grand parents used to spend for the children. Yet the appellant showed utter disregard for them. He used to talk in very filthy language about them to the children. When the respondent's father had a heart attack, the appellant did not even go to the hospital nor did

he pay any money for his medical expenses.

9. According to the respondent the appellant has a very suspicious nature. He has no friends and he never liked any of the respondent's friends coming home. He harboured a suspicion in his mind that the respondent is having illicit relationship with her colleague in the bank. The said colleague along with his wife also met him and tried to convince him that this suspicion was baseless. But that had no effect on the appellant. It is because of the phone call made by the said colleague that on 9/11/2000 the appellant beat the respondent and drove her out of the house with children at night time. After this incident the appellant wrote a letter to the respondent which speaks volumes.

10. Apart from these instances of mental cruelty there are several other instances like throwing things in the house, breaking the tube lights because electricity bills were high, which have also been narrated in the petition.

11. The respondent claimed that the appellant is financially very well placed. According to her the appellant has contributed only towards the minor

expenses of the household and all the major expenses have been incurred by her. According to her the appellant has invested large amounts in shares out of the savings. He could save because all the household expenses were incurred by her. She alleged that during the pendency of the proceedings the appellant sold the flat situated near Mhatre Bridge which was purchased by him through the funds accumulated by him by refusing to contribute towards the monthly expenses of the household. According to the respondent she has, therefore, legal right in the said consideration received by the appellant after selling the flat near Mhatre Bridge. She also has legal rights in the savings made by the appellant and as such she is entitled to a sum of Rs.6 lakhs on that count. According to her she is entitled to retain for herself and her children the flat situated at Elite Homes, Hingne Khurd, Pune to the total exclusion of the appellant. According to her the appellant has purchased a flat at Jagtap Hospital in the same vicinity and has deliberately disposed of the flat situated near Mhatre Bridge. In the circumstances the respondent prayed for a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act. She also prayed for permanent maintenance to her @

Rs.1500/- per month and Rs.1500/- each to each of her two children per month. She also prayed for a declaration that the flat No. 7, Elite Homes, Pune be declared to be her property after adjusting her claim of Rs.6 lakhs. She prayed that the appellant be restrained from entering the flat No. 7, Elite Homes or from disturbing her peaceful possession of the said flat.

12. Since the sexual and financial cruelty are held not proved it is not necessary for us to make detailed references to the averments and evidence in that connection.

13. The appellant filed his written statement and denied the respondent's case. According to the appellant he was doing Siddha Samadhi Yog which required him to eat raw vegetables. He did not like the vegetables to be kept in the refrigerator. According to him the respondent used to purposely keep the vegetables in the refrigerator. Because she had kept the vegetables in the refrigerator the appellant was annoyed. According to him he asked for explanation but he never threw the rolling pin at the respondent.

14. According to the appellant the respondent used to keep buying clothes for the children. According to him she used to waste money on clothes and he used to tell her not to do so. He has denied that he ever beat the children on that count.

15. According to the appellant in the interest of children, he used to insist on discipline. The respondent was only concerned about her job. She used to neglect the children.

16. According to the appellant the respondent has given a false account of the incident dated 9/11/2000. He has stated that a colleague of the respondent used to try to be very intimate with her. He used to phone the respondent everyday. The appellant had told her to keep in touch with that colleague only for office work. According to the appellant he was under the impression that after Madhya Pradesh trip all would be well. But on the very night on which they returned from the trip, the respondent received call from her colleague. According to the appellant he tried to explain to the respondent, but the respondent was adamant. She left the house with the children. The appellant denied that he beat her or drove her

and the children out. According to the appellant he has spent money on the matrimonial home and he has a legal right to stay there. Because of the respondent's insistence he is staying in rented premises where he has to pay high rent. According to him the respondent should be prevented from obstructing him, if he occupies the matrimonial home.

17. The appellant has stated that he used to spend money in the house. He denied that the respondent had to borrow money from her parents. The appellant denied that he disrespected the respondent's parents. The appellant denied that he has a suspicious nature. The appellant denied the allegations of financial and sexual cruelty.

18. In support of his case the appellant examined himself. In support of her case, the respondent examined herself. She also examined her father Avinash Limaye, her friend Sharmishtha Dandawate and her daughter Anuja.

19. After perusing the evidence on record the trial court held that the respondent had proved that the appellant subjected her to physical and

mental cruelty. The allegations of financial and sexual cruelty were held not proved. The trial court granted a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The trial court also granted permanent alimony of Rs.6 lakhs to the respondent and restrained the appellant from entering the matrimonial home. Hence this appeal by the appellant-husband.

20. We have heard Mr. Patil, learned counsel appearing for the appellant and Mr. Anturkar, the learned counsel appearing for the respondent. With the assistance of the learned counsel, we have gone through the evidence.

21. Mr. Patil, learned counsel for the appellant submitted that the respondent has not made out any case for a decree of divorce. She has not been able to prove the allegations of mental and physical cruelty. He submitted that it is apparent from the evidence of the respondent, her father Avinash Limaye and evidence of her daughter Anuja that the appellant voluntarily left the matrimonial house and allowed the respondent and the children to stay there. This conduct of the appellant is not taken into consideration by the trial court.

This conduct is not consistent with the allegation of alleged mental and physical cruelty of the appellant. The learned counsel contended that the instances of alleged mental cruelty are mere instances of normal wear and tear of family life. The allegation that the appellant was beating the children mercilessly is frivolous. If that was so the entire family would not have gone to Madhya Pradesh together. He submitted that the appellant used to admonish the children so that they would maintain discipline. He submitted that the appellant never beat the respondent with the rolling pin as alleged. The appellant always respected the parents of the respondent and the allegation that he never helped them or showed any disrespect to them are false. The learned counsel contended that even the allegation that the appellant cast aspersions on the character of the respondent are false. There were some rumours about the alleged relationship between the respondent and one Mr. Shrotri and, therefore, the appellant merely used to warn the respondent. In fact he had great respect for her. He never doubted her character and this finding of the trial court is perverse.

22. The learned counsel then contended that the trial court has fallen into an error in directing the appellant to pay permanent alimony of Rs.6 lakhs to the respondent. The respondent has not given any particulars as to what amount was contributed by her towards the household expenses. The pleadings are extremely vague. The flat is in the joint name of the appellant and the respondent and, therefore, the appellant has equal right to the flat. All the articles in the flat are also purchased by the appellant and the appellant has right over them. The respondent has not clarified which property belongs to her. The respondent is serving. She is an officer earning good salary and, therefore, it was wrong to direct the appellant to pay her a sum of Rs.6 lakhs . The learned counsel contended that the matrimonial flat was purchased for a sum of Rs.7,28,000/-. It is the respondent’s case that she obtained a loan of Rs.3 lakhs from the bank and contributed the said amount for the purchase of the flat. The learned counsel contended that rest of the amount was contributed by the appellant. The respondent has not stated that she has paid the entire consideration of the flat. If both have contributed towards the purchase of the flat and

the flat stands in the name of the appellant and the respondent the learned Judge could not have passed injunction order restraining the appellant from entering the said flat. There cannot be any injunction against the true owner.

23. The learned counsel then pointed out that the Family Court had no jurisdiction to declare that the respondent is the owner of the said flat and confer ownership on her and assuming the Family Court had jurisdiction to do so, there were no proper pleadings in that behalf. No evidence was led to establish ownership and, therefore, the Family Court could not have passed such a decree. The learned counsel further pointed out that the father of the appellant is not a party to the proceedings. The Family Court has given a finding that the flat in Triveni Nagar is not owned by the father of the appellant but it is of the ownership of the appellant. In the absence of any pleadings and without the appellant's father being made a party to the proceedings, the learned judge could not have given such a declaration. This virtually dislodges the title of the father of the appellant to the flat in Triveni Nagar in his absence. The learned counsel, therefore, contended that this

court should set aside the impugned judgment and decree.

24. Mr. Anturkar, the learned counsel for the respondent on the other hand submitted that the trial court has rightly held that mental and physical cruelty is proved. He submitted that the evidence of the father of the respondent and evidence of Anuja, the daughter of the appellant and the respondent substantiates the case of the respondent that the appellant caused physical and mental cruelty to her. He submitted that the first incident when the appellant beat the respondent with rolling pin must be held to be proved because the appellant has admitted that some incident did take place. However, he has denied that he hit the respondent with rolling pin. The learned counsel contended that the beating must be held to be proved on the basis of the evidence of the respondent which inspires confidence. He submitted that the incident dated 9/11/2000 is also conclusively proved by the evidence of the respondent and her daughter and in fact in his letter addressed to the respondent the appellant has admitted this incident. The learned counsel pointed out that the evidence on record is clear on

the aspect of suspicious nature of the appellant. He cast aspersions on her character and drove her out of the house on 9/11/2000 because of the alleged relationship between her and Mr. Shrotri. The learned counsel contended that the learned Judge is also right in restraining the appellant from entering the flat considering the unruly conduct of the appellant. He submitted that considering the fact that the respondent has to look after two children the trial court was justified in directing the appellant to pay Rs.6 lakhs to the respondent. He, therefore, submitted that no interference is necessary with the impugned order.

25. So far as the physical cruelty is concerned, though several incidents have been alleged by the respondent it is not necessary to refer to all the incidents. In our opinion on the basis of the evidence of the respondent it must be held that it is proved that the appellant beat the respondent with a rolling pin because she kept the vegetables in the fridge. The appellant threw the rolling pin with such a force that after hitting the respondent it broke into pieces. The appellant has accepted this incident except the throwing of the rolling pin. The appellant has not been able to dislodge

the respondent on this aspect in her cross-examination. The evidence of the appellant inspires confidence. In our opinion, this incident bears out the case of physical cruelty.

26. The second incident is dated 9/11/2006. On that day the respondent received a phone call from Mr. Shrotri, her colleague. The appellant was annoyed by this. He forcibly drove the respondent and the children out of the matrimonial home. The respondent and the children were weeping. The children time and again requested the appellant not to hit the respondent and to allow them to come in the house but the appellant did not bother about their request. The respondent requested the appellant to allow her to have her vehicle’s key so that she could go to her mother’s house as it was night time. The appellant told her that she would not get anything and he banged the door. The respondent’s narration of this incident has a ring of truth. In the cross-examination also the respondent has stood firm. The appellant has not been able to make any dent in her cross-examination on this aspect. Anuja the daughter of the couple has supported the respondent on this aspect. She has stated that on 9/11/2000 when they returned

home, her mother received a call from her boss. According to her when her mother was talking on phone her father pulled and twisted her mother's hand. The phone was disconnected. Her father pushed her mother to the wall of the house. He asked her to get out of the house. She called her brother. They went out of the house along with their mother. According to her her mother requested the appellant to give them their footwear but he refused and shut the door forcibly. In the cross-examination also Anuja has repeated that on 9/11/2000 there was a quarrel between her father and mother because her mother got a phone call from her boss. Anuja has corroborated the respondent. In our opinion, incident dated 9/11/2000 is proved.

27. The respondent has stated that the appellant used to beat the children. Anuja has also stated that the appellant used to beat her brother and her mother. The father of the respondent Avinash Limaye has also stated that the appellant used to beat the children without any rhyme or reason. He has stated in his evidence that he had told the appellant not to beat the respondent and the children but the appellant told him that he was head of the family and he will do whatever he likes

and he would continue beating them. Shri Limaye has stated that when the appellant told him this, he slapped him twice and also told him that he would now understand how one feels after getting assaulted and told him to behave properly. Nothing has come in the corss-examination of this witness which would make us to disbelieve his evidence. His evidence appears to us to be most natural. The fact that the father-in-law was driven to assault the son-in-law to make him understand the agony of being hit goes a long way to establish that the appellant was beating the respondent and the children. Such unusual conduct of father-in-law in the facts of this case appears to us to conclusively prove the allegation that the appellant used to severely beat the respondent and the children.

28. Apart from that there is on record letter Exhibit 101 which is addressed by the appellant's father to the appellant. This letter is dated 13/8/98. In this letter the appellant's father has reminded the appellant that he had completed 39 years of age and hence he should try to control his anger and he should not beat his children. There cannot be a better evidence to prove that the

appellant was hitting his children mercilessly than this letter coming from his own father. Such merciless beating must certainly have caused mental cruelty to the respondent.

29. It is well established by a long line of the judgments of the Supreme Court that character assassination of one spouse by the other spouse constitutes mental cruelty. In **Vijay Kumar Ramchandra Bhate v. Neela Vijaykumar Bhate, 2004(2) Bom.C.R. 384**, the Supreme Court was considering the same question. The Supreme Court observed as under:

> . "The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under section 13(1)(i-a) of the Act. The position of law in this regard has come to be well-settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with

> a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-excamination satisfy the requirement of law has also come to be firmly laid down by this Court."

30. We have already noted that in this case in the written statement itself the appellant has made allegations against the respondent suggesting that she was having an affair with her colleague in the bank. Even in his evidence in the court he has repeated it. Therefore, in our opinion, the claim made by the respondent that the appellant caused

mental cruelty to her by casting aspersions on her character is sustained.

31. In **V. Bhagat v. D. Bhagat, 1994 (1) SCC 337**, the Supreme Court has observed that mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. In that case also in the written statement the wife has alleged that the husband was suffering from mental hallucination; that he had morbid mind for which he needs expert psychiatric treatment and that he was suffering from paranoid disorder. The Supreme Court held that the counter allegations made by the wife against the husband constitute mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife. The ratio of this judgment is also attracted to the present case.

32. We are of the considered opinion that the

appellant has inflicted physical and mental cruelty on the respondent. Its degree is such that it is not possible for the respondent to live with the appellant. The respondent is, therefore, entitled to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

33. We are, however, of the opinion that as pleadings and evidence stand today the learned Judge could not have directed the appellant to pay permanent alimony to the respondent to the tune of Rs.6 lakhs. The learned Judge has declared that the matrimonial flat Elite Home is of the ownership of the respondent. Admittedly it stands in the name of both, the appellant and the respondent. It is argued by the learned counsel for the appellant that the trial court has no jurisdiction to give such a declaration. This aspect has not been considered by the trial court. Besides the trial court has declared that the flat in Triveni Nagar is not of the ownership of the appellant's father. The appellant is the real owner of the said flat. The appellant's father is not a party to the proceedings. It is doubtful whether the learned Judge could have dislodged the alleged title of the appellant's father to the flat at Triveni Nagar,

that too in his absence. On all these aspects there are no proper pleadings. No evidence is led. We are, therefore, of the opinion that this part of the impugned judgment and order deserves to be set aside and the matter deserves to be remanded to the trial court, for considering it afresh on the issues formulated by us within a time frame laid down by this court. However, the amount of Rs.6 lakhs which the appellant was directed to pay over to the respondent must be ordered to be deposited in the Family Court at Pune, and the Registrar of the Family Court Pune, must be directed to invest the said amount in FDR of any nationalised bank on usual terms.

34. The appellant has shown his willingness to pay all the expenses of the children. In the circumstances, the appellant will have to continue to pay an amount of Rs.2000/- per month to both the children during the pendency of the petition. In the circumstances, we pass the following order;

a). The impugned judgment and decree to the extent it dissolves the marriage between the appellant and the respondent on the ground of mental and physical cruelty is confirmed. The marriage

between the appellant and the respondent shall stand dissolved by a decree of divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

b) The appellant will deposit amount of Rs.6 lakhs in Family Court, Pune for the benefit of the children. The Registrar, Family Court, Pune will deposit that amount in F.D.R. of any Nationalised Bank, until the litigation between parties is finally over. That amount will not be paid to the appellant or to the respondent and will be subject to final orders that will be passed by Trial Court or Appeal Court.

c) The appellant will continue to pay the amount of Rs.2000/- p.m. for both the children as maintenance for the children during pendency of the petition.

d) The decree contained in paragraphs 3, 4, 5 and 6 of the operative part of order is set aside and the matter is remanded

in respect of following issues;

i) Whether the original petitioner will in law be entitled to seek declaration as prayed for from Family Court under Family Court's Act?

ii) If yes, whether in the facts and circumstances of this case, the original petitioner should be given such declaration by Family Court or any other order as Family Court may deem fit?

iii) Whether Family Court can record any finding about flat at Mhatre Bridge and Triveni Nagar in the absence of Narhari alias Kishor, father of the appellant?

iv) Whether in facts and circumstances of the case, the original petitioner proves that flat at Mhatre Bridge and Triveni Nagar were/are owned by the appellant?

v) What should be the amount of permanent alimony in the facts and circumstances of this case?

e) During the pendency of petition, there shall be injunction restraining the appellant from disturbing possession of the respondent of the flat at Elite Home.

f) The parties will be entitled to amend their pleadings, add parties, and lead such evidence, as they deem necessary for adjudication of aforesaid issues. All contentions about aforesaid points are kept open.

g) The Family Court shall decide the matter afresh in the light of above order within a period of eight months from the date of receipt of this order by it;

h) The Family Court appeal is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FAMILY COURT APPEAL NO. 15 OF 2006

DATE ON WHICH THE JUDGMENT
RESERVED : 24-08-2006

DATE ON WHICH THE JUDGMENT
DELIVERED: **31/8/2006.**

Transcription of
Judgment / Order.

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE ANOOP V. MOHTA:

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?